

REMARKS

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Claims 1-58 are currently pending. Claims 31-44 are withdrawn without traverse and claims 45-49 are withdrawn with traverse.

10 In the present Office Action the Examiner rejects claims 1-11, 14-21 and 50-58 under U.S.C. §103(a) as being unpatentable over U.S. Pat 5,806,520 to Berger in view of U.S. Pat. 4,819,753 to Higo. Claim 11 is rejected under 35 U.S.C. §112 second paragraph, as being indefinite for lack of antecedent for "the joint". Claims 12-13 and 22-30 are objected to as being dependent upon a rejected base claim but are indicated as being allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

15 In the current amendment, claims 31-44 are cancelled and claim 11 is amended to correct for the lack of antecedent. Applicants respectfully traverse the rejection of claims 1-11, 14-21 and 50-58.

In supporting the rejection of claims 1-11, 14-21 and 50-58 the Examiner states that "Berger ... fails to show first second bones as being analyzed with respect to the velocity of a sound wave through bone" but that "Higo discloses a functional evaluation device that shows analyzing the acoustics of two bones". Applicants respectfully disagree that Higo shows analyzing acoustics of two bones.

Higo discloses sensing sounds, *i.e.* "acoustic emissions", generated by an artificial joint implanted in a body to analyze functioning of the joint (Figs. 1-3, and 5-7 and discussion thereof) but not analyzing acoustics of two bones. In an embodiment described with respect to Fig. 6, to sense the sounds, an acoustic transducer is placed on the body on either side of the joint adjacent a different bone of two bones that are coupled by the joint. Sounds generated by the joint when it is moving, arrive at the transducers at different arrival times and a time difference between the arrival times is used together with speed of sound in bone to indicate where the degradation of the joint is located. Whereas in Fig. 6 and the discussion thereof Higo shows two bones, nowhere does Higo show or indicate in any manner analyzing the acoustics of the two bones, only the acoustics generated by the artificial joint joining them.

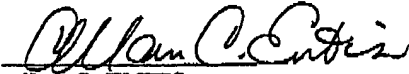
Higo discusses analyzing acoustics of bone only to determine the speed of sound in bone and only with reference to Fig. 4. However, for that purpose as is noted in the discussion (column 4 lines 27-53) and shown in Fig. 4 only one bone is involved. Higo must therefore be understood to teach away from using two bones to analyze acoustics of bone.

In view of the above, applicants submit that the Examiner has not established a prima facie case of obviousness for the claims rejected under 35 U.S.C. §103(a) and that all the claims presently pending and being examined are patentable. An allowance is respectfully awaited.

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Respectfully submitted,
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